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05 UNITED STATES DISTRICT COURT
06 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

07 CHERYL A.,)
08 Plaintiff,) CASE NO. C20-5503-MAT
09 v.)
10 COMMISSIONER OF SOCIAL) ORDER RE: SOCIAL SECURITY
SECURITY,) DISABILITY APPEAL
11 Defendant.)
12 _____)

13 Plaintiff proceeds through counsel in her appeal of a final decision of the
14 Commissioner of the Social Security Administration (Commissioner). The Commissioner
15 denied Plaintiff's applications for Disability Insurance Benefits (DIB) and Supplemental
16 Security Income (SSI) after a hearing before an Administrative Law Judge (ALJ). Having
17 considered the ALJ's decision, the administrative record (AR), and all memoranda of record,
18 this matter is REVERSED and REMANDED for further administrative proceedings.

19 **FACTS AND PROCEDURAL HISTORY**

20 Plaintiff was born on XXXX, 1978.¹ She has a bachelor's degree and her previous
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22 ¹ Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

01 jobs include cashier/checker at Trader Joe's. (AR 49-50, 63-64.)

02 Plaintiff applied for DIB and SSI in July 2017. (AR 197-205.) Those applications
03 were denied and Plaintiff timely requested a hearing. (AR 125-31, 134-41.)

04 In June 2019, ALJ John Michaelson held a hearing, taking testimony from Plaintiff
05 and a vocational expert (VE). (AR 32-70.) In August 2019, the ALJ issued a decision finding
06 Plaintiff not disabled. (AR 15-25.) Plaintiff timely appealed. The Appeals Council denied
07 Plaintiff's request for review (AR 1-6), making the ALJ's decision the final decision of the
08 Commissioner. Plaintiff now seeks judicial review.

09 **JURISDICTION**

10 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §
11 405(g).

12 **DISCUSSION**

13 The Commissioner follows a five-step sequential evaluation process for determining
14 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it
15 must be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had
16 worked since June 9, 2016 (the alleged onset date), but that work did not rise to the level of
17 substantial gainful activity. (AR 17-18.) At step two, it must be determined whether a
18 claimant suffers from a severe impairment. The ALJ found that before September 30, 2011
19 (Plaintiff's date last insured), Plaintiff did not have any severe impairments,² but that
20 beginning on the alleged onset date, Plaintiff's post-traumatic stress disorder, anxiety, and

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22 ² This finding indicates that Plaintiff is not eligible for DIB (see 20 C.F.R. § 404.131), and it is not challenged.

01 myofascial pain syndrome were severe impairments. (AR 18.) Step three asks whether a
02 claimant's impairments meet or equal a listed impairment. The ALJ found that Plaintiff's
03 impairments did not meet or equal the criteria of a listed impairment. (AR 19-20.)

04 If a claimant's impairments do not meet or equal a listing, the Commissioner must
05 assess residual functional capacity (RFC) and determine at step four whether the claimant has
06 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of
07 performing light work with additional limitations: she can frequently balance, kneel, crouch,
08 crawl, stoop, and climb ramps or stairs. She can occasionally climb ropes, ladders, or
09 scaffolds. She can frequently reach, handle, finger, and feel bilaterally. She must avoid
10 concentrated exposure to unprotected heights, moving machinery, and similar hazards. She
11 can perform simple, repetitive, routine tasks with no public contact. She is limited to one-on-
12 one contact and interaction with co-workers. (AR 20.) With that assessment, the ALJ found
13 Plaintiff unable to perform past relevant work. (AR 23.)

14 If a claimant demonstrates an inability to perform past relevant work, the burden shifts
15 to the Commissioner to demonstrate at step five that the claimant retains the capacity to make
16 an adjustment to work that exists in significant levels in the national economy. With the
17 assistance of the VE, the ALJ found Plaintiff capable of transitioning to other representative
18 occupations, such as marker, routing clerk, and router. (AR 23-24.)

19 This Court's review of the ALJ's decision is limited to whether the decision is in
20 accordance with the law and the findings supported by substantial evidence in the record as a
21 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means
22 more than a scintilla, but less than a preponderance; it means such relevant evidence as a

reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

Plaintiff argues the ALJ erred in assessing certain medical opinion evidence, discounting Plaintiff's subjective allegations, in assessing her RFC, and in failing to address a lay statement. The Commissioner argues that the ALJ's decision is supported by substantial evidence, and that any error therein is harmless.

Medical opinion evidence

Plaintiff challenges the ALJ's assessment of opinions written by examining psychologist David Morgan, Ph.D.

Legal standards

Because Plaintiff applied for benefits after March 27, 2017, new regulations apply to the ALJ's evaluation of medical opinion evidence. Under the regulations, an ALJ "will not defer or give any specific evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative medical finding(s)[.]" 20 C.F.R. §§ 404.1520c(a), 416.920c(a).³ The ALJ must articulate and explain the persuasiveness of an opinion or prior finding based on "supportability" and "consistency," the two most important factors in the evaluation. *Id.* at (a), (b)(1)-(2). The "more relevant the objective medical evidence and

³ "A prior administrative medical finding is a finding, other than the ultimate determination about [disability], about a medical issue made by our Federal and State agency medical and psychological consultants at a prior level of review . . . in [a] claim based on their review of the evidence in your case record[.]" 20 C.F.R. §§ 404.1513(a)(5), 416.913(a)(5).

01 supporting explanations presented” and the “more consistent” with evidence from other
02 sources, the more persuasive a medical opinion or prior finding. *Id.* at (c)(1)-(2). The ALJ
03 may but is not required to explain how other factors were considered, as appropriate,
04 including relationship with the claimant (length, purpose, and extent of treatment relationship;
05 frequency of examination); whether there is an examining relationship; specialization; and
06 other factors, such as familiarity with other evidence in the claim file or understanding of the
07 Social Security disability program’s policies and evidentiary requirements. *Id.* at (b)(2),
08 (c)(3)-(5). *But see id.* at (b)(3) (where finding two or more opinions/findings about same
09 issue equally supported and consistent with the record, but not exactly the same, ALJ will
10 articulate how other factors were considered). Where a single medical source provides
11 multiple opinions or findings, the ALJ conducts a single analysis and need not articulate how
12 each opinion or finding is considered individually. *Id.* at (b)(1).

13 Dr. Morgan’s opinions

14 Dr. Morgan examined Plaintiff in June 2016 and April 2017 and completed DSHS
15 form opinions on both occasions. (AR 359-69.) The ALJ summarized the marked limitations
16 found by Dr. Morgan and indicated that he found them unpersuasive because Dr. Morgan did
17 not explain the basis for these limitations, and they were inconsistent with Plaintiff’s
18 treatment history, activities of daily living, and normal mental status examinations. (AR 21.)
19 The ALJ also noted that in both opinions, Dr. Morgan found that Plaintiff’s limitations would
20 persist for less than a year, and thus do not support a finding of disability of the requisite
21 duration. (*Id.*)

22 The ALJ’s assessment of Dr. Morgan’s opinions is reasonable and supported by

01 substantial evidence. Dr. Morgan's mental status examinations were normal (AR 362-63,
02 368-69), and none of Dr. Morgan's clinical findings explain the basis for the marked
03 limitations he indicated. Furthermore, Dr. Morgan's description of Plaintiff's limited
04 activities is contradicted by her description of her activities elsewhere in the record. (*See*,
05 *e.g.*, AR 215-16, 435-36.) Lastly, the limited duration of Dr. Morgan's opinions is another
06 factor that reasonably undermines the persuasiveness of his conclusions. *See Carmickle v.*
07 *Comm'r of Social Sec. Admin.*, 533 F.3d 1155, 1165 (9th Cir. 2008).

08 Although Plaintiff argues that the ALJ failed to provide specific, legitimate reasons to
09 discount Dr. Morgan's opinions (Dkt. 10 at 5-8), this argument overlooks the application of
10 the new regulations to the ALJ's assessment of the opinion evidence. Because the ALJ
11 properly considered the persuasiveness factors set forth in 20 C.F.R. § 416.920c(a) and (b)(1)-
12 (2), the Court affirms this portion of the ALJ's decision.

13 Plaintiff's subjective testimony

14 The ALJ discounted Plaintiff's subjective testimony because he found her allegations
15 were inconsistent with the medical evidence and her independence as to activities of daily
16 living. (AR 22-23.) Plaintiff contends that the ALJ failed to provide clear and convincing
17 reasons to discount her testimony, as required in the Ninth Circuit. *See Burrell v. Colvin*, 775
18 F.3d 1133, 1136-37 (9th Cir. 2014).

19 Plaintiff contends that the ALJ made no specific findings regarding her subjective
20 testimony, and also notes that a claimant's testimony cannot be discounted solely based on a
21 lack of corroboration with objective evidence. Dkt. 10 at 3-4. Plaintiff's contention is not
22 persuasive: the ALJ's findings were admittedly few, but they can be found in the decision.

01 First, the ALJ contrasted Plaintiff's allegations of physical limitations with the medical
02 record, which showed that Plaintiff reported no pain or mild pain, and that her physical
03 examinations were normal. (AR 22.) This is a valid reason to discount Plaintiff's
04 allegations.⁴ See *Carmickle*, 533 F.3d at 1161 ("Contradiction with the medical record is a
05 sufficient basis for rejecting the claimant's subjective testimony.").

06 Second, the ALJ recounted Plaintiff's testimony that she needed help to complete
07 household activities such as cooking and cleaning, but found that the record showed that
08 Plaintiff was independent in her activities of daily living and that her mental conditions had
09 only "minor" impact on these activities. (AR 20, 22.) To the extent that the ALJ identified an
10 inconsistency between Plaintiff's testimony and the record in this regard, the ALJ provided an
11 additional valid reason to discount Plaintiff's allegations. See *Orn v. Astrue*, 495 F.3d 625,
12 639 (9th Cir. 2007) (activities may undermine credibility where they (1) contradict the
13 claimant's testimony or (2) "meet the threshold for transferable work skills").

14 In other parts of the decision, the ALJ also pointed to factors that undermined
15 Plaintiff's allegation of disability. At step one, the ALJ noted that Plaintiff had worked since
16 the alleged onset date, and that she stopped working for reasons other than her impairments.
17 (AR 17-18.) This is a valid reason to discount Plaintiff's allegation of an inability to work
18 due to her impairments. See Social Security Ruling 82-61, 1982 WL 31387, at *1 (Jan. 1,
19 1982) ("A basic program principle is that a claimant's impairment must be the primary reason
20 for his or her inability to engage in substantial gainful work."). At step three, the ALJ also

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22 ⁴ Plaintiff clarifies on reply that she does not challenge this line of the ALJ's reasoning. Dkt.
12 at 2.

01 noted that although Plaintiff testified at the hearing that she isolated herself from others, she
02 had at other times reported no problems getting along with other people. (AR 19 (referencing
03 AR 51, 219-20).) This inconsistency is another valid reason to discount Plaintiff's
04 allegations. *See Greger v. Barnhart*, 464 F.3d 968, 972 (9th Cir. 2006) (ALJ may consider a
05 claimant's inconsistent or non-existent reporting of symptoms). These findings lend
06 additional support to the ALJ's assessment of Plaintiff's allegations.

07 Because the ALJ provided several valid reasons to discount Plaintiff's allegations, the
08 Court affirms this portion of the ALJ's decision.

09 RFC

10 A State agency consultant found in relevant part that Plaintiff "is capable of carrying
11 out simple repetitive tasks. [She] cannot maintain a rapid production pace or attain precise
12 measurements and tolerances due to distractibility and anxiety. [She] can function in a space
13 free of unscheduled or unexpected intrusions." (AR 109.) The ALJ found the State agency
14 opinion to be unpersuasive to the extent it was contradicted by a consultative physical
15 examination, but did not find the psychological limitations to be unpersuasive. (AR 23.) In
16 the RFC assessment, however, the ALJ limited Plaintiff to performing simple, repetitive,
17 routine tasks with no public contact and only one-on-one contact and interaction with co-
18 workers. (AR 20.)

19 According to Plaintiff, the ALJ failed to fully account for the State agency opinion
20 because he did not preclude production-pace work or unscheduled/unexpected intrusions in
21 the RFC assessment. Dkt. 10 at 9. Plaintiff suggests that "it is not entirely clear that [she]
22 would be able to perform" the jobs identified at step five if these limitations had been

01 included, and thus the ALJ's error was harmful. *Id.*

02 The Court cannot detect any conflict between much of the State agency opinion and
03 the jobs identified at step five. The simple, repetitive, routine tasks with minimal social
04 interaction contemplated in the RFC assessment would not be reasonably expected to involve
05 unscheduled or unexpected intrusions, and is obviously consistent with the State agency
06 consultant's opinion that Plaintiff can perform simple, repetitive tasks.

07 But there is a potential conflict involving the State agency opinion that Plaintiff is
08 unable to perform at a production-rate pace. All of the step-five jobs are classified as light
09 jobs, and the Dictionary of Occupational Titles' (DOT) definition of light work embedded
10 into each of the step-five job descriptions mentions the potential of production-rate pace. *See*
11 DOT 209.587-034, *available at* 1991 WL 671802 (Jan. 1, 2016); DOT 222.687-022,
12 *available at* 1991 WL 672133 (Jan. 1, 2016)); DOT 222.587-038, 1991 WL 672123 (Jan. 1,
13 2016). Without clarification from a VE, the Court cannot determine whether the step-five
14 jobs involve a production-rate pace, and the Commissioner has not persuaded the Court that
15 the ALJ's RFC assessment adequately accounts for a restriction on production-pace work.
16 Dkt. 11 at 9. Accordingly, the Court cannot find harmless the ALJ's error in failing to
17 account for all of the psychological limitations mentioned by the State agency consultant.

18 On remand, the ALJ shall reconsider the State agency opinion and, if necessary,
19 reformulate the RFC assessment and enter new step-five findings. The ALJ shall also address
20 the written statement of Plaintiff's friend, Nicole Laurent, which was not addressed in the
21 current decision.

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CONCLUSION

For the reasons set forth above, the Commissioner's decision is REVERSED and this matter is REMANDED for further administrative proceedings. On remand, the ALJ should reconsider the State agency opinion and, if necessary, reformulate the RFC assessment and enter new step-five findings. The ALJ shall also address Ms. Laurent's statement.

DATED this 15th day of January, 2021.



Mary Alice Theiler
United States Magistrate Judge